



INTERIOR BOARD OF INDIAN APPEALS

Estate of James Edward French

38 IBIA 132 (10/16/2002)

Related Board cases:

36 IBIA 83

37 IBIA 239



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF JAMES EDWARD FRENCH : Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 02-161
:
: October 16, 2002

Appellant Judy French Baker seeks review of a July 18, 2002, order issued in the estate of Decedent James Edward French by Administrative Law Judge William E. Hammett. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal on the grounds that the relief Appellant is seeking is not within the probate authority of the Department of the Interior.

This is the third time that Appellant has appeared before the Board in regard to this estate. In its first decision, issued on March 20, 2001, the Board affirmed the decision issued by Bureau of Indian Affairs Attorney Decision Maker Ange Aunko Hamilton. However, it remanded the case to the Attorney Decision Maker for the purpose of requesting information from the Department's Office of Special Trustee (OST) as to whether funds in the approximate amount of \$1,800 should have been deposited into Decedent's Individual Indian Money (IIM) account and, if so, what the disposition of those funds was. 36 IBIA 83 (2001).

The Attorney Decision Maker issued a decision on remand on March 6, 2002. She stated that OST records showed that a check in the amount of \$1,847.74 had been sent to Decedent approximately 19 months before his death, and that the check was in a "paid" status. She therefore concluded that Decedent had received and cashed the check prior to his death.

Appellant appealed this decision to the Board. However, because of a change in the governing regulations, the Board docketed and dismissed the appeal without prejudice, informing Appellant that her appeal would be considered by an Administrative Law Judge. 37 IBIA 239 (2002). Administrative Law Judge William E. Hammett issued a decision on July 18, 2002, in which he concluded that the evidence examined by the Attorney Decision Maker indicated that no additional funds in the approximate amount of \$1,800 should have been in Decedent's IIM account. Because of this conclusion, the Judge determined that no further hearing was necessary and that any remaining dispute over the disposition of that amount was not a matter to be resolved in this probate proceeding.

Appellant appealed to the Board. In her notice of appeal, Appellant contends that the Attorney Decision Maker orally informed her that the check was cashed by a James Edward French with a date of birth of August 28, 1961, which was not Decedent's date of birth. The Judge's July 18, 2002, decision suggests that Appellant argued to him that the Attorney Decision Maker had further stated that the distribution to this alleged second James Edward French was based on a probate.

In its first decision in this case, the Board laid out certain parameters for the Attorney Decision Maker. It stated:

If the Office of the Special Trustee finds that additional funds are due to Decedent, the Attorney Decision Maker shall modify her order nunc pro tunc to show the new amount. If the Office of the Special Trustee states that no additional funds are due to Decedent, the [Attorney Decision Maker's] January 31, 2001, decision shall stand in its entirety. If the Office of the Special Trustee states that no additional funds are due to Decedent, and if Appellant objects to that statement, Appellant must pursue her objection directly with the Office of the Special Trustee. This probate proceeding is not the proper forum for resolution of such a dispute.

36 IBIA at 84.

OST has stated that no additional funds are due to Decedent. The Attorney Decision Maker and the Judge properly followed the Board's instructions by not considering the matter further in the context of this probate proceeding. The Board has no way to determine whether the Attorney Decision Maker made the statements which Appellant attributes to her. However, even if she did, for purposes of this probate, that fact does not overcome the information she received from OST that no additional funds were due to Decedent. If Appellant believes that funds due to Decedent were improperly paid to another individual, she must pursue the matter with OST. Consideration of that issue is beyond the scope of this probate proceeding.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Hammett's July 18, 2002, decision is docketed but dismissed on the grounds that the relief Appellant is seeking is not within the Department's probate authority.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge